IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4874 OF 2004

ALONG WITH

CRIMINAL APPLICATION NO.4914 OF 2004

Dr.Ashok Kumar Chaudhary ...Applicant

Versus

M/s.Subuthi Finance Ltd. & Anr. ...Respondents

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Mr.N.K.Thakore with Mr.B.B.Parekh for Applicant.

Mr.K.V.Saste. A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 21, 2004.

P.C.

1. Heard Mr.Parekh for Applicant and Mr.Saste, A.P.P. for Respondent No.2. None appears for Respondent No.1 though served. Affidavit of service has been filed, which indicate that Respondent No.1/complainant has been duly served.

2. The short question that arises for consideration in the present Applications is: whether the complaint as filed by the Respondent No.1 makes out any offence, so far as Applicant before this Court i.e. accused No.6 is concerned?

3. The only allegation in the complaint, so as to name the Applicant as accused No.6 is that he is the Director of the accused Company, who is jointly and severally responsible for the financial and administrative decisions and day-to-day affairs of the Company. The Applicant is not signatory to the cheque. There is no other assertion, much less, material facts spelt out in the complaint so as to indicate the complicity of the Applicant to make him liable for the offence committed by the Company, as is required by the mandate of Section 141 of the Negotiable Instruments Act. Recently, I had occasion to examine this aspect **in Criminal Writ Petition No.2241 of 2004 - Madanlal Taparia & Anr. vs. The Bank of Rajasthan Ltd. & Anr. decided on 14th December 2004.** For the view taken therein, the criminal action in the present case

cannot be allowed to proceed, as there is no allegation to indicate complicity of the Applicant, as is required by Section 141 of the Act.

4. Accordingly both the Applications succeed and are allowed in terms of prayer clause (a), only insofar as Applicant/accused No.6 is concerned.

A.M.KHANWILKAR, J.